

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEFFREY B. JACKSON,

Defendant.

CIVIL ACTION

No. 04-3010-CM

No. 00-20172-CM

MEMORANDUM AND ORDER

On October 10, 2001, defendant Jeffrey B. Jackson was convicted in this court of illegal possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Defendant was subsequently sentenced on January 7, 2002, to a term of imprisonment of 104 months. Defendant's conviction was affirmed by the Tenth Circuit Court of Appeals. On January 14, 2004, defendant filed a Motion Pursuant to 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence By a Person in Federal Custody (Doc. 46). On June 22, 2004, the court dismissed two of defendant's three allegations, and directed the United States to respond to defendant's remaining allegation of ineffective assistance of counsel. Defendant did not reply.

I. Standard

Defendant alleges that his trial counsel "never investigated charges or criminal facts in which Petitioner was charged, nor the Attorney for Petitioner put forth a defense strategy in preparation for Trial issues." (Pet. at 7). In determining whether a habeas petitioner's trial counsel acted ineffectively, the court applies the general ineffective assistance of counsel standard identified by the Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *See Romano v. Gibson*, 278

F.3d 1145, 1151 (10th Cir.2002) (applying *Strickland*). Under *Strickland*, a petitioner must satisfy a two-part test in order to prevail on an ineffective assistance of counsel claim. First, he must demonstrate that his attorney's "performance was deficient" and "fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 687-88. In applying this test, the court gives considerable deference to an attorney's strategic decisions and "recognize[s] that counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* at 690. Second, a habeas petitioner must show that the trial counsel's deficient performance prejudiced him, which requires a showing that there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694.

II. Discussion

Defendant claims that his trial counsel failed to investigate, yet defendant has failed to specify any particular facts that went undiscovered as a result of this alleged failure. Defendant may also be alleging that his trial counsel failed to call certain witnesses, but defendant has not alleged that trial counsel's failure to call certain witnesses was not a strategic decision. *United States v. Snyder*, 787 F.2d 1429, 1432 (10th Cir. 1986) (whether to call a particular witness is a tactical decision and is therefore a matter of discretion for trial counsel). Additionally, defendant has offered no evidence, by witness affidavits or otherwise, as to what specifically any witness would have testified. *Foster v. Ward*, 182 F.3d 1177, 1186 (10th Cir. 1999) (mere possibility that a witness's testimony could reflect on a defendant's credibility is insufficient to satisfy "the reasonable probability of a different result" standard). Defendant clearly has not shown that the reliability of the outcome of the proceeding was compromised by his trial counsel's lack of investigation.

The defendant also has alleged that his trial counsel did not put forth a defense strategy. Again, defendant has failed to detail this alleged conduct, nor has defendant shown that this alleged conduct was unreasonable or that he suffered prejudice. In fact, a review of the trial transcript in this matter indicates that defendant's trial counsel vigorously cross-examined all three of the prosecution's witnesses, particularly regarding discrepancies between their testimony and their written reports. Defendant's trial counsel also called two witnesses, Rafor James Hunter and Andrea Smith, as well as the defendant, to testify on behalf of the defense, and made a motion at the close of the prosecution's case pursuant to Rule 29 of the Federal Rules of Criminal Procedure for a judgment of acquittal. Finally, during his closing argument, defendant's trial counsel argued emphatically that the prosecution had failed to prove its case beyond a reasonable doubt and, as pointed out by the Tenth Circuit on appeal, vigorously attacked the credibility of the police witnesses because of their inconsistencies between their testimony and their written reports.

Defendant has failed to establish that the actions of his trial counsel fell below an objective standard of reasonableness and has failed to establish prejudice as a result of the alleged errors of his counsel. Because defendant has failed to establish any grounds of ineffective assistance of counsel, the court denies the instant motion.

IT IS THEREFORE ORDERED that the Motion Pursuant to 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence By a Person in Federal Custody (Doc. 46) is denied.

Dated this 10 day of August 2004, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge